

1 TIFFANY & BOSCO, P.A
2 Gregory L. Wilde, Esq.
3 Nevada Bar No. 004417
4 212 South Jones Boulevard
5 Las Vegas, Nevada 89107
6 Telephone: 702 258-8200
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8
9 Bank of America Mortgage Capital Corporation
10 09-77522

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In Re:
Franklin G. Fuentes and Christine M. Fuentes

Debtors

09-23777-btb
Order No.:
Chapter 13

DECLARATION RE BREACH OF CONDITION

STATE OF SC)
16)ss.
17 COUNTY OF Clark)

18 I, Teressa J. Williams, under the penalty of perjury of the United States, declare and state:

19 1. As to the following facts, I know them to be true of my personal knowledge, and if called
20 upon to testify in this action, I could and would testify competently thereto.

21 2. I am an employee of Wells Fargo as Servicer for Bank of America Mortgage Capital
22 Corporation, Secured Creditor herein, and am most familiar with the loan and the bankruptcy case.

23 3. The real property subject to the Deed of Trust is commonly described as 4703 Visconti
24 Way, Las Vegas, NV 89141 and legally described as follows:

25 ...
26 ...

1 PARCEL ONE (1):

2 LOT 24 BLOCK A OF LAURENTIA AT SOUTHERN HIGHLANDS, AS SHOWN BY
 3 MAP THEREOF ON FILE IN BOOK 96, OF PLATS, PAGE 65, IN THE
 OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

4 RESERVING THEREFROM A NON-EXCLUSIVE RIGHT AND EASEMENT OF
 5 INGRESS, EGRESS, AND OF USE AND ENJOYMENT IN TO AND OVER THE
 COMMON ELEMENTS AS SET FORTH IN THE DECLARATION OF COVENANTS,
 CONDITION AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR
 6 SOUTHERN HIGHLANDS, RECORDED JANUARY 6, 2000 IN BOOK 20000106 AS
 DOCUMENT NO. 01678, AS THE SAME FROM TIME TO TIME BE AMENDED
 7 AND/OR SUPPLEMENTED IN THE OF OFFICE OF THE COUNTY RECORDER OF
 CLARK COUNTY, NEVADA.

8 PARCEL TWO (2):

9 A NON-EXCLUSIVE RIGHT AND EASEMENT OF INGRESS, EGRESS, AND OF
 10 USE AND ENJOYMENT IN TO AND OVER THE COMMON ELEMENTS AS SET
 FORTH IN THE DECLARATION OF COVENANTS, CONDITION AND
 RESTRICTIONS AND RESERVATION OF EASEMENTS FOR SOUTHERN
 11 HIGHLANDS, RECORDED JANUARY 6, 2000 IN BOOK 20000106 AS
 DOCUMENT NO. 01678, AS THE SAME FROM TIME TO TIME BE AMENDED
 12 AND/OR SUPPLEMENTED IN THE OFFICE OF THE COUNTY RECORDER OF
 CLARK COUNTY, NEVADA.

14 4. I have examined the document entitled "Order Regarding Adequate Protection", a copy of
 15 which is attached hereto and marked as Exhibit "A" and incorporated herein by reference. I represent my
 16 personal knowledge as to whether the Debtors have complied with the requirements of said Order.

17 5. Pursuant to the aforementioned Order, the Debtors would have fifteen (15) days from the
 18 date of this Declaration in which to cure the delinquencies due. If upon the 16th day, Debtors failed to so
 19 cure those delinquencies, the automatic Stay Order would be vacated and extinguished as to this Secured
 20 Creditor.

21 6. As of the date of this Declaration, the Debtors have not made the payments as required by
 22 the aforementioned Order. The Debtors are presently past due as follows:

23 4 Monthly Payment(s) at \$2,815.57	\$11,262.28
(July 1, 2010 - October 1, 2010)	
24 4 Monthly Payment(s) at \$2,897.00	\$11,588.00
(November 1, 2010 - February 1, 2011)	
25 1 Late Charge(s) at \$112.83	\$112.83
(July 1, 2010 - February 1, 2011)	
26 Attorneys Fees	\$100.00
Suspense Amount	(\$1,311.92)
Total	\$21,751.19

1 7. Debtors are responsible for the subsequent payments that will come due during this
2 Breach period:

3 a. 0 Monthly Payments

4 **PARTIAL TENDERS WILL NOT BE ACCEPTED**

5 8. Due to Debtors' failure to timely and properly comply with the Order as set forth
6 hereinabove, Secured Creditor has been forced to incur additionally attorneys' fees to obtain relief from the
7 Stay Order to take possession of its real property.

8 9. These attorneys' fees are in addition to attorneys' fees incurred prior to the non-compliance
9 and are now owing to Secured Creditor from Debtors pursuant to the Deed of Trust.

10 10. Should the Debtor cure the default, the Debtors must forward the funds to:

11 **GREGORY L. WILDE, ESQ.**
12 **TIFFANY & BOSCO, P.A**
13 **212 South Jones Boulevard**
14 **Las Vegas, Nevada 89107**

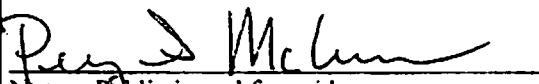
15 I declare under penalty of perjury that the foregoing is true and correct.

16 

17 Teressa J. Williams

18 SUBSCRIBED and SWORN to before me
19 this 28 day of March, 2011

20 VP Loan Documentation

21 
22 Notary Public in and for said
23 State and County

24

PENNY S. MCCRAVEN NOTARY PUBLIC SOUTH CAROLINA MY COMMISSION EXPIRES 12-14-2014
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1 Electronically Filed _____
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5 Entered on Docket
6 March 15, 2010
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Hon. Linda B. Riegle
United States Bankruptcy Judge

A handwritten signature in black ink, appearing to read "Linda B. Riegle".

WILDE & ASSOCIATES
Gregory L. Wilde, Esq.
Nevada Bar No. 004417
212 South Jones Boulevard
Las Vegas, Nevada 89107
Telephone: 702 258-8200
Fax: 702 258-8787
Bank of America Mortgage Capital Corporation
09-77522 / 0028813541

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In Re:

Franklin G. Fuentes and Christine M. Fuentes

BK-S-09-23777-lbr

MS Motion No.
Date: February 9, 2010
Time: 10:30 a.m.

Chapter 13

Debtors.

ORDER RE ADEQUATE PROTECTION

Secured Creditor's Motion for Relief from the Automatic Stay having come on for hearing
in the above-entitled Court, all appearances as noted on court record, and based upon all the
papers and pleadings on file herein and good cause appearing therefore,

Exhibit A

1 IT IS HEREBY ORDERED, ADJUDGED and DECREED that the debtors will cure the
2 post-petition arrearages currently due as follows:

3 Monthly Payments at \$2,815.56	\$8,446.68
(December 1, 2009 - February 1, 2010)	
4 2 Late Charges at \$112.83	\$225.66
(November 1, 2009 - January 1, 2010)	
5 Property Inspections	\$15.00
6 Motion for Relief Filing Fee	\$150.00
7 Attorneys Fees	\$750.00
Total	\$9,587.34

8
9 The total arrearage shall be paid in six monthly installments. Payments one
10 through five (1-5) in the amount of \$1,616.70 shall be in addition to the regular monthly payment
11 and shall be due on or before the 20th day of the month commencing with the March 20, 2010
12 payment and continuing throughout and concluding on or before July 20, 2010. The sixth final
13 payment in the amount of \$1,616.67 shall be paid on or before August 20, 2010.

14 IT IS FURTHER ORDERED, ADJUDGED and DECREED that the Secured Creditor
15 shall give Debtors at least seven business days' notice of the time, place and date of sale.

16 IT IS FURTHER ORDERED, ADJUDGED and DECREED that the Debtors shall resume
17 and maintain the regular monthly payments in a timely fashion, outside of any Bankruptcy Plan,
18 beginning with the March 1, 2010, payment, on Secured Creditor's Trust obligation, encumbering
19 the subject Property, generally described as 4703 Visconti Way, Las Vegas, NV 89141, and
20 legally described as follows:

21 PARCEL ONE (1):

22 LOT 24 BLOCK A OF LAURENTIA AT SOUTHERN HIGHLANDS, AS SHOWN BY
23 MAP THEREOF ON FILE IN BOOK 96, OF PLATS, PAGE 65, IN THE
24 OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

25 RESERVING THEREFROM A NON-EXCLUSIVE RIGHT AND EASEMENT OF
26 INGRESS, EGRESS, AND OF USE AND ENJOYMENT IN TO AND OVER THE
COMMON ELEMENTS AS SET FORTH IN THE DECLARATION OF COVENANTS,
CONDITION AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR
SOUTHERN HIGHLANDS, RECORDED JANUARY 6, 2000 IN BOOK 20000106 AS
DOCUMENT NO. 01678, AS THE SAME FROM TIME TO TIME BE AMENDED
AND/OR SUPPLEMENTED IN THE OF OFFICE OF THE COUNTY RECORDER OF
CLARK COUNTY, NEVADA.

27 PARCEL TWO (2):

28 A NON-EXCLUSIVE RIGHT AND EASEMENT OF INGRESS, EGRESS, AND OF

1 USE AND ENJOYMENT IN TO AND OVER THE COMMON ELEMENTS AS SET
 2 FORTH IN THE DECLARATION OF COVENANTS, CONDITION AND
 3 RESTRICTIONS AND RESERVATION OF EASEMENTS FOR SOUTHERN
 4 HIGHLANDS, RECORDED JANUARY 6, 2000 IN BOOK 20000106 AS
 5 DOCUMENT NO. 01678, AS THE SAME FROM TIME TO TIME BE AMENDED
 6 AND/OR SUPPLEMENTED IN THE OFFICE OF THE COUNTY RECORDER OF
 7 CLARK COUNTY, NEVADA.

8 IT IS FURTHER ORDERED, ADJUDGED and DECREED that if the Debtors fail to make
 9 any payments as stated in this Order, or fail to maintain the regular monthly payments on Secured
 10 Creditor's Trust Dced obligation, allowing the normal grace period, then Secured Creditor may file
 11 and serve upon Debtors and Debtors' counsel, a fifteen (15) Day Notice Declaration Re Breach of
 12 Condition. For each such Declaration Re Breach of Condition filed, there shall be assessed an
 13 attorney fees of \$100.00, to be paid by the Debtors upon any reinstatement. If upon the sixteenth
 14 (16th) day Debtors have failed to cure the delinquency, then Secured Creditor may submit to this
 15 Court an Order vacating the automatic stay as to Secured Creditor, and Secured Creditor may
 16 thereafter proceed with foreclosure proceedings upon the subject Property, pursuant to applicable
 17 State Law, and take any action necessary to obtain complete possession thereof.

18 Submitted by:

19 WILDE & ASSOCIATES

20 By /S/GREGORY L. WILDE

21 GREGORY L. WILDE, ESQ.
 22 Attorneys for Secured Creditor
 23 212 South Jones Boulevard
 24 Las Vegas, Nevada 89107

25 APPROVED AS TO FORM & CONTENT:

26 Kathleen A. Leavitt

27 By _____
 28 Kathleen A. Leavitt
 29 Chapter 13 Trustee
 30 201 Las Vegas Blvd., So. #200
 31 Las Vegas, NV 89101

Sam Benevento

By _____

Sam Benevento
 Attorney for Debtors
 1945 E. Warm Springs Road
 Las Vegas, NV 89119

Nevada Bar No. 3676

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10 Bank of America Mortgage Capital Corporation
11 09-77522

12 **UNITED STATES BANKRUPTCY COURT**
13 **DISTRICT OF NEVADA**

14 In Re:

15 Franklin G. Fuentes and Christine M. Fuentes

16 Debtor(s).

17 BK-S-09-23777-btb

18 Date: _____
19 Time: N/A

20 Chapter 13

21 **CERTIFICATE OF MAILING**

22 1. On March 29, 2011, I served the following documents(s):

23 *Declaration RE Breach of Condition*

24 2. I served the above-named document(s) by the following means to the persons as
25 listed below:

26 ■ a. ECF System

27 Sam Benevento
28 generaldelivery@nevlawyers.com
29 Attorney for Debtors

30 Kathleen A Leavitt
31 courtsecf3@las13.com
32 Trustee

1 ■ b. United States mail, postage fully prepaid

2

3 Franklin G. Fuentes and Christine M. Fuentes
4 4703 Visconti Way
5 Las Vegas, NV 89141
6 Debtors

7 ■ c. Personal Service (List persons and addresses. Attach additional paper if necessary)

8 I personally delivered the document(s) to the persons at these addresses:

9

10 ■ For a party represented by an attorney, delivery was made by handing the document(s) to the
11 attorney's office with a clerk or other person in charge, or if no one is charge by leaving the
12 document(s) in a conspicuous place in the office.

13

14 ■ For a party, delivery was made by handing the document(s) to the party or by leaving the
15 document(s) at the person's dwelling house or usual place of abode with someone of suitable age
16 and discretion residing there.

17 ■ d. By direct mail (as opposed to through the ECF System)

18 *(List persons and email addresses. Attach additional paper if necessary)*

19

20 Based upon the written assignment of the parties to accept service by email or a court order. I
21 caused the document(s) to be sent to the persons at the mail addresses listed below. I did not
22 receive, within a reasonable time after the transmission, any electronic message or other indication
23 that the transmission was unsuccessful.

24

25 ■ e. By fax transmission *(List persons and fax numbers. Attach additional paper if necessary)*

26 Based upon the written assignment of the parties to accept service by fax transmission or a

1 court order. I faxed the document(s) to the persons at the fax numbers listed below. No error was
2 reported by the fax machine that I used. A copy of the record of the fax transmission is attached.
3

4 **f. By messenger (List persons and addresses. Attach additional paper if necessary)**

5 I served the document(s) by placing them in an envelope or package addressed to the
6 persons at the addresses listed below and providing them to a messenger for service.
7

8 *(A declaration by the messenger must be attached to this Certificate of Service).*

9 **I declare under penalty of perjury that the foregoing is true and correct.**

10 Signed on (date): 3/29/11

11
12 Jamie Miller
13 DECLARANT

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SIGNATURE OF DECLARANT
